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**Before the
Federal Communications Commission
Washington, D.C. 20554**

FCC 95-178

In the Matter of)
)
Amendment of the Commission's) PR Docket No. 92-257
Rules Concerning Maritime) RM 7956
Communications)

FIRST REPORT AND ORDER

Adopted: April 26, 1995

Released: May 26, 1995

By the Commission:

I. INTRODUCTION

1. In a Notice of Proposed Rule Making and Notice of Inquiry (NOI)¹, adopted November 5, 1992, we began a proceeding to review thoroughly the present and future requirements of maritime communications. This First Report and Order addresses the proposals made in the Proposed Rule Making portion of the NOI. It amends Parts 2, 63, 80 and 90 of the Commission's Rules, 47 C.F.R. Parts 2, 63, 80 and 90, to authorize private land mobile sharing of certain maritime VHF frequencies and to reclassify international public coast stations as non-dominant common carriers. The rules adopted herein allow use of certain marine VHF channels in land-locked areas and streamline the regulatory procedures for public coast stations.

II. DISCUSSION

A. Private Land Mobile Use of Marine Frequencies

2. The Council of Independent Communication Suppliers (CICS) filed a Petition for Rule Making on March 6, 1992, proposing to permit private land mobile Industrial and

¹ See Notice of Proposed Rule Making and Notice of Inquiry, PR Docket 92-257, 7 FCC Red 7870 (1992).

Land Transportation (I/LT) service operations within the marine VHF (156-162 MHz) band.² In the NOI, the Commission proposed rules allowing marine VHF public correspondence channels 24-28 and 84-87³ to be used on a co-primary basis by eligibles in the I/LT radio services for base/mobile operations in areas more than 88 kilometers (55 miles) from navigable waterways and existing co-channel public coast stations.⁴ Additionally, we sought specific comments regarding the protection of future public coast station expansion, the required use of narrowband equipment,⁵ and the implications of our pending proposal to "refarm" certain private land mobile spectrum.⁶ Commenters focused on two general areas of concern, sharing and separation criteria.

3. In summary, we will allow I/LT eligibles to share marine VHF public correspondence channels 24-28 and 84-87 on a primary basis within the 48 contiguous states far from navigable waterways and existing VHF public coast stations, in accordance with a revised minimum separation matrix. Additionally, we will allow sharing of the above channels on a secondary, non-interference basis in areas near navigable waterways, but far from VHF public coast stations. I/LT applications for this spectrum must be coordinated by the Commission certified frequency coordinator for their radio service.⁷

4. Primary Sharing. American Commercial Barge Lines Company and Waterway

² I/LT eligibles are defined by 47 C.F.R. Part 90, Subparts D (Industrial Radio Service) and E (Land Transportation Radio Service). The Business Radio Service, 47 C.F.R. § 90.75, is a subservice of the Industrial Radio Service. CICS's petition (RM-7956), which was placed on public notice April 2, 1992, excluded the Business Radio Service, as did our proposal in the NOI.

³ Marine VHF public correspondence channels 24-28 and 84-87 are duplex pairs within the 157.200-157.400 MHz and 161.800-162.000 MHz bands.

⁴ Public coast stations provide interconnected public correspondence service to ships at sea. See 47 C.F.R. § 80.371(c) and NOI at paragraph 41. The term "navigable waterway" is defined in 33 C.F.R. § 2.205-25 and will be incorporated into the Commission's rules by reference in the final rules.

⁵ The mandatory use of narrowband equipment in the marine VHF band will be addressed in a future rule-making proceeding.

⁶ See PR Docket No. 92-235, 7 FCC Rcd 8105 (1992).

⁷ See 47 C.F.R. § 90.175. Regarding our pending "refarming" proceeding wherein we proposed, inter alia, to reclassify the 26 private land mobile radio services into several broad licensing categories, we clarify that only those applicants eligible for licensing in the I/LT radio services -- under the rules governing each subservice in force today -- are eligible for such sharing.

Communication System, Inc. (ACBL/WATERCOM), Mobile Marine Radio (MMR), and the Ohio River Company (ORCO) claim that such sharing would not serve the public interest because public coast stations provide a safety service to the marine community and interference to public correspondence channels could prove detrimental to marine safety.⁸ ACBL/WATERCOM's comments also note that most urban areas, where land mobile frequencies are congested, are also close to navigable waterways.⁹ Therefore, according to ACBL/WATERCOM, the sharing of marine frequencies would hinder present or future maritime operations. ACBL/WATERCOM, the United States Coast Guard (USCG), and ORCO argue that sharing should only be allowed in major cities, far from waterways, such as Atlanta, Denver, Phoenix, and Dallas.¹⁰

5. ACBL/WATERCOM also opposes I/LT sharing on a primary basis because public coast stations provide a common carrier service to the marine community.¹¹ ACBL/WATERCOM claims that no other common carriers, under the Commission's rules, are forced to share frequencies with non-common carrier licensees. Additionally, Global Maritime Communication Systems, Inc. and Ross Engineering Company (GMSCI/REC) maintain that allowing I/LT eligibles to achieve primary status on these frequencies will hinder future public coast station expansion.¹² Further, several commenters argue that the "refarming" of private land mobile spectrum may make more land mobile frequencies available to the I/LT services, thus decreasing congestion and making the sharing of marine frequencies unnecessary.¹³ Finally, Alascom, Inc. (Alascom) opposes the sharing of marine VHF frequencies in central Alaska because it uses these frequencies for control of oil flow blocking valves at 94 unattended stations along the Trans-Alaska oil pipeline.¹⁴ Alascom states that these frequencies must be guarded from interference in the interest of health, safety, and environmental protection.

6. USCG, the Industrial Telecommunications Association, Inc. and CICS (ITA/CICS), the Utilities Telecommunications Council (UTC), and SEA, Inc. (SEA) each

⁸ ACBL/WATERCOM comments at 13, MMR comments at 16, ORCO comments at 9.

⁹ ACBL/WATERCOM comments at 14.

¹⁰ ACBL/WATERCOM comments at 15, MMR comments at 15, ORCO comments at 7, and USCG reply comments at 2.

¹¹ ACBL/WATERCOM comments at 13.

¹² GMSCI/REC comments at 4.

¹³ ACBL/Watercom comments at 15, GMSCI/REC comments at 4, MMR comments at 16, and ORCO comments at 9-10.

¹⁴ Alascom comments at 1.

support the proposal to allow I/LT sharing of these channels. Specifically, ITA/CICS and UTC argue that additional I/LT channels are needed in land-locked areas of the country where there are no marine users.¹⁵ Further, the USCG and SEA agree that such sharing can promote spectrum efficiency, but emphasize the need for careful evaluation of separation criteria to prevent interference to maritime communications.¹⁶

7. As we stated in the NOI, inter-service sharing has been successfully used in the past to increase spectrum efficiency. The comments do not lead us to conclude that such sharing will be detrimental to present or future marine public coast station operations. We believe the safeguards we are adopting, such as increasing the separation criteria,¹⁷ are sufficient to protect marine operations. For example, such sharing will not take place within public coast station service areas. Marine channels would be available to I/LT eligibles only in areas far removed from currently licensed public coast stations. Further, to protect future public coast stations, I/LT operations must be removed the same distance from navigable waterways¹⁸ as they must be from existing public coast stations. We agree that "refarming" may provide some long term relief to private land mobile congestion problems. This alone, however, is not a sufficient reason to preclude the immediate benefits associated with inter-service sharing. For these reasons, we are adopting rules to allow I/LT eligibles to share certain VHF public correspondence channels on a primary basis far from public coast stations and navigable waterways. Finally, to protect Alascom operations, we are limiting I/LT sharing of these channels to the 48 contiguous states.

8. Three commenters propose that the Commission extend the sharing of marine channels to certain private land mobile eligibles other than I/LT entities. For example, the Associated Public-Safety Communications Officers, Inc. (APCO) and the Forestry-Conservation Communications Association urge the Commission to make a portion of the shared channels available on a primary basis exclusively for Public Safety Radio Service (Public Safety) eligibles.¹⁹ APCO argues that there is a need for wide-area VHF Public Safety systems in remote mountain and rural areas. Additionally, APCO notes that there are a number of Public Safety licensees currently operating by waiver on certain marine VHF

¹⁵ ITA/CICS comments at 4, ITA/CICS reply comments at 13, UTC comments at 4, and UTC reply comments at 3.

¹⁶ USCG reply comments at 2, SEA comments at 12.

¹⁷ ¶ 11 infra.

¹⁸ Note 4, supra.

¹⁹ APCO comments at 2 and FCCA comments at 2.

public correspondence channels.²⁰ APCO emphasizes the need to provide sharing just for Public Safety eligibles on a portion of the proposed shared channels, generally referencing the statutory objective of promoting safety of life and property through the use of the radio spectrum. Further, the National Association of Business and Educational Radio, Inc. (NABER) recommends that the Commission extend the scope of its sharing proposal to include all private land mobile radio service users, including Business and Public Safety eligibles.²¹ ITA/CICS claims, however, that widening the scope of our proposal to include Business and Public Safety eligibles could create more congestion on the shared frequencies because of the large number of entities who qualify for licenses in these services.²² Additionally, ITA/CICS and the UTC point out that sharing among a smaller group of licensees would be easier to administer and enforce.²³

9. The issue here is whether to open up sharing of nine channels to all private land mobile users on a routine basis at this time. While experience has shown that inter-service sharing can work, we believe it best, especially in cases involving a safety service such as the maritime service, to go slowly initially. Additionally, with only nine channels available, we do not think it is a good idea to divide them among several different land mobile entities as suggested by APCO. The I/LT service appears to be an ideal candidate to share these frequencies because many of these licensees operate in rural areas far from navigable waterways.²⁴ Also, unlike most public safety operations, I/LT communication requirements may be able to tolerate licensing on a secondary basis.²⁵ Finally, CICS's original petition in this proceeding provided both a showing of need and engineering data supporting I/LT sharing. Therefore, we will limit sharing to I/LT entities for the present time. After we gain experience in sharing marine channels with I/LT licensees on a routine basis,

²⁰ APCO comments at 2. Several waivers have been granted for Local Government Radio Service licensees to use maritime frequencies in areas located far from waterways. Additionally, certain public safety licensees, licensed before June 30, 1958, are grandfathered under a footnote to the United States Table of Frequency Allocations, 47 C.F.R. § 2.105 n. US266, and operate on 157.35 MHz and 161.85 MHz, on the condition that they do not cause harmful interference to stations in the maritime services.

²¹ NABER reply comments at 4.

²² ITA/CICS comments at 4.

²³ UTC comments at 4.

²⁴ According to ITA/CICS, 70% of all I/LT licensees are located in rural areas far from navigable waterways. See ITA/CICS reply comments at 4.

²⁵ Because of the urgent nature of public safety communications, it would not be prudent to permit most public safety eligibles to share public correspondence frequencies on a secondary basis. See ¶ 13, *infra*.

we may revisit the issue of expanded sharing with other private land mobile eligibles.

10. Separation criteria. In the NOI, we proposed a matrix which listed the required minimum distances between future I/LT base stations, navigable waterways, and co-channel public coast stations. Upon taking into account issues such as mobiles operating on the fringe of a coast station's service area, station antenna heights, and transmitter powers, the minimum distances in the matrix increased proportionally with I/LT antenna height and transmitter power from 88 kilometers (55 miles) to 158 kilometers (99 miles).²⁶

11. Four commenters, however, argue that these minimum distances are too short and will result in interference to maritime operations.²⁷ MMR's comments include an engineering study which generally supports the Commission's method of determining these minimum separation distances.²⁸ MMR suggests, however, that the antenna height for I/LT mobiles should be assumed as ten feet, not six feet above ground level (AGL), thereby increasing the proposed required minimum separation distances.²⁹ Additionally, MMR questions the Commission's proposal to protect only a 43 kilometer (27 mile) service area for public coast stations. Further, MMR and ORCO maintain that the proposed frequency pairs must be reversed, allowing I/LT base stations and public coast stations to transmit on the same frequencies.³⁰

12. We agree with MMR that the antenna height of some vehicles may exceed six

²⁶ The distances in the matrix were derived using the propagation curves specified in 47 C.F.R. § 80.767, assuming non-overlap of the 14 dBu interference contour of a proposed I/LT station with the 26 dBu service contour of any existing public coast station. The 26 dBu service contour is the sum of the current 17 dBu contour and a 9 dB antenna height correction factor. See note 26 infra. The interfering contour is 12 dB less than the service contour, as required by 47 C.F.R. § 80.773. The 26 dBu public coast station service contour was calculated assuming a 30 meter (100 foot) public coast station antenna height and a transmitting power of 100 Watts effective radiated power (ERP).

²⁷ ACBL/Watercom comments at 14, MMR comments at 17, NMEA comments at 10, and ORCO comments at 8.

²⁸ MMR supplement to comments, engineering study by Dr. George L. Schrenk of COMPCOMM Inc.

²⁹ The VHF propagation curves found in 47 C.F.R. § 80.767 assume antennas to be 30 feet above ground for mobiles, which is accurate for stations in the maritime services. In the private land mobile services, however, mobile antenna heights are generally assumed to be lower. Therefore, a correction factor is needed to allow the VHF propagation curves to model propagation distance when lower mobile antennas are assumed.

³⁰ MMR comments at 18, ORCO comments at 9.

feet AGL. For years, however, the typical antenna height of a vehicle operating in the Private Land Mobile Service has been assumed to be six feet AGL.³¹ Therefore, we are using a six foot height with a 9 dB correction factor as proposed in the NOI. We agree with MMR's arguments regarding the proposed public coast station protected service area and the proposed frequency pairings. As a result of a staff survey analyzing current public coast stations' antenna heights and transmitter powers, we have increased our assumed service area for public coast stations from 43 kilometers (27 miles) to 71 kilometers (44 miles).³² Hence, the minimum required distances in the matrix for co-channel operation³³ increase proportionally with I/LT antenna height and transmitter power from 116 kilometers (72 miles) to 187 kilometers (116 miles).³⁴ Further, we are reversing the I/LT base/mobile transmit frequency assignments, as was suggested by MMR and ORCO.

13. Secondary Sharing. Although primary sharing will promote more efficient use of marine frequencies in certain inland areas, the required separation from navigable waterways would effectively prevent coastal sharing even in cases far from co-channel VHF public coast stations. In their reply comments, ITA/CICS also support the sharing of these channels on a secondary, non-interference, basis in areas that meet the required separation from co-channel public coast stations, but not to navigable waterways.³⁵ Such sharing would be secondary to future public coast station operations. MMR, however, argues that the beneficial implementation of this type of proposed sharing must be on a mutually non-interfering basis.³⁶

³¹ See, e.g., Second Report and Order, Docket No. 18262, 46 FCC 2d 752 (1974).

³² The 26 dBu public coast station service area contour was recalculated by using the propagation curves found in 47 C.F.R. § 80.767, assuming a 120 meter (395 foot) public coast station antenna height and a transmitting power of 100 Watts ERP.

³³ We recognize that the Commission's final decision in the "refarming" proceeding may change specific frequency assignments for I/LT users. Therefore, assignments offset from marine public correspondence channels, but still within the authorized marine bandwidth, will be considered co-channel.

³⁴ The distances in the matrix were derived as described in note 23, supra, using the recalculated public coast station service area, which increased from 43 kilometers (27 miles) to 70 kilometers (44 miles). Thus, the minimum separation distances contained in the final rules are increased by 27 kilometers (17 miles) due to the change in assumed public coast station antenna height from 30 meters (100 feet) to 122 meters (400 feet). I/LT operations must also afford the same protection to grandfathered public safety licensees operating on 157.35 MHz and 161.85 MHz.

³⁵ ITA/CICS reply comments at 9.

³⁶ MMR comments at 4.

14. We agree with ITA/CICS in that allowing use of these marine channels on a secondary basis would increase sharing opportunities without negatively impacting future maritime operations. Therefore, we will allow I/LT sharing of certain public correspondence channels on a secondary basis where I/LT operations meet the required separation from public coast stations, but not the required separation from navigable waterways.³⁷ The frequency coordinator must inform the applicant that the recommended frequency is secondary to present and future maritime operations. Additionally, the applicant must state in the application that he or she is aware that such shared channels are available only on a secondary basis and that the station must cease operation upon notification by the Commission that the station is causing harmful interference to any existing or future co-channel maritime operation.³⁸

B. Reclassification of Public Coast Stations as Non-Dominant Common Carriers

15. MMR and WATERCOM (Petitioners) jointly filed a petition asking the Commission to classify maritime mobile service providers as non-dominant common carriers.³⁹ COM/NAV Marine, Inc. filed supporting comments.⁴⁰ We note as a preliminary matter, the USCG's determination that it "does not believe [petitioners' proposal] will adversely affect safety of life at sea."⁴¹

³⁷ Individual waiver requests will be considered in cases where proposed I/LT operations do not meet the required separation from public coast stations. Such a waiver request must show for each public coast station within 182 kilometers (113 miles) of the proposed I/LT base station: a) the non-overlap of the 26 dBu coast station service contour with the 14 dBu I/LT station interference contour, and b) the non-overlap of the 26 dBu I/LT station service contour with the 14 dBu coast station interference contour.

³⁸ Secondary I/LT operations must also afford the same protection to grandfathered public safety licensees operating on 157.35 MHz and 161.85 MHz.

³⁹ Petition for Determination of Non-Dominant Common Carrier Status filed February 1988 by Mobile Marine Radio, Inc. and Waterway Communications System, Inc. Petitioners are public coast station licensees that provide telegraphy services, comprised of Morse telegraphy, narrow-band direct-printing and radiofacsimile as well as MF, HF and marine VHF band radiotelephony service.

⁴⁰ COM/NAV Marine, Inc.'s comments summarize Petitioners' views. Although they were fully considered, they will not be separately discussed.

⁴¹ See Letter from Chief, Telecommunications Systems Division, U.S. Coast Guard to Chief, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. (May 1, 1989). The Coast Guard submitted its comments in response to a request from the Commission. In addition, the Coast Guard urged, inter alia, that prior notice of discontinuance of public coast stations be provided to the International Telecommunications Union, the appropriate Coast Guard Commander and the Defense Mapping Agency.

16. In the NOI, we defined certain public coast stations as international carriers⁴² and found that, under the "market power" test delineated in the Commission's International Competitive Carrier proceeding,⁴³ these public coast stations are non-dominant because they do not possess market power.⁴⁴ We noted that, nevertheless, international public coast stations are currently subject to the full panoply of regulations applicable to international common carriers under Title II of the Communications Act.⁴⁵ We proposed, therefore, reclassifying international public coast stations as non-dominant common carriers, and noted that this would result in these stations being regulated under the streamlined rules available to other international non-dominant common carriers.⁴⁶ On the suggestion of MMR,⁴⁷ we also

Licensees are currently required to provide notification of discontinuance to the Coast Guard "as soon as practicable." See 47 C.F.R. § 80.302.

⁴² NOI at ¶ 33 and note 51. We clarify that only MF and HF band public coast stations are, per se, international carriers because only these stations communicate on the high seas, i.e. coastal waters beyond VHF range of the nearest land (approximately 25 nautical miles). See NOI at note 53. Higher band stations are international carriers only if, and then to the extent that, they engage in foreign communication as defined by the Act. See 47 U.S.C. § 153(f).

⁴³ International Competitive Carrier Policies, CC Docket No. 85-107, 102 FCC 2d 812 (1985). In this proceeding, we adopted standards for determining whether international carriers are dominant or non-dominant. We ruled, in short, that such carriers are dominant if they possess market power and non-dominant if they do not. We modeled these standards after those adopted previously for domestic carriers. *Id.* at ¶ 2 and note 3.

⁴⁴ NOI, ¶ 36, 7 FCC Rcd 7870 (1992).

⁴⁵ We recently reclassified all public coast stations as commercial mobile radio service (CMRS) providers. See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, ¶ 83 (1994) ("332 SRO"). We also exercised our authority to forbear, inter alia, from Section 203 (tariffs) and Section 214 (entry and exit) regulations for domestic CMRS. *Id.* at ¶¶ 165-182. We declined therein, however, to address forbearance for international CMRS. See *id.* at ¶ 126, note 261, and ¶ 182, note 369.

⁴⁶ Non-dominant international carriers, for example, may discontinue service to a geographic market on 120 days notice, 47 C.F.R. § 63.15, and filed tariffs may become effective 14 days after they are filed, 47 C.F.R. § 61.58(b). The Commission is reexamining tariff filing requirements for nondominant carriers following SWBell v FCC, No 93-1562, (DC Cir. January 20, 1995). See Public Notice, DA 95-428, released March 6, 1995.

⁴⁷ MMR, Further Comments (1991).

solicited comment on whether stations which provide landline telex services as well as maritime service should be treated differently from stations which provide only maritime services.

17. All seven commenters⁴⁸ addressing the issue of reclassification support our proposal to reclassify international public coast stations as non-dominant common carriers. Historically, as the commenters note, these stations were the only common carrier communication service available between land and vessels on the high seas. International public coast stations now, however, compete with satellite communications services, such as INMARSAT and, in a few markets, cellular telephone providers.⁴⁹ This increase in competition, while generally beneficial to the public, has made such substantial inroads to public coast station revenues as to threaten the existence of many public coast stations. This same increase in competition via new technologies⁵⁰ has eliminated whatever dominance public coast stations once had.

18. Three commenters responded to our questions about differential treatment for public coast stations affiliated with carriers who also provide landline telex services.⁵¹ The essence of these comments is that public coast stations that provide landline services should be required to conduct their land and marine services separately to avoid cross-subsidization that would work to the detriment of exclusive maritime public coast stations.

19. We are unconvinced however, that imposing separate subsidiary requirements on public coast stations providing landline telex service would be in the public interest. As we have previously recognized in the context of Bell Operating Companies offering enhanced services, the imposition of structural separation may hurt consumers by creating inefficiencies

⁴⁸ Marine Telephone Company, KFS World Communications, Inc., the National Marine Electronics Association, ACBL/WATERCOM, ORCO, MMR, and SEA, Inc.

⁴⁹ See, e.g., NOI at ¶ 35, 7 FCC Rcd 7870 (1992).

⁵⁰ Public coast station operations, under our rules, have not changed significantly over the past 50 years. Unlike, for example, competing satellite services wherein calls from vessels on the high seas are interconnected to the PSTN automatically, many public coast station calls are still interconnected manually. In a companion item, we are proposing additional changes to our rules governing public coast station operations. See Further Notice of Proposed Rule Making, PR Docket No. 92-257.

⁵¹ See MMR, Comments at 13 (1993), KFS World Communications, Inc. (KFS), Comments at 11, MTC, Comments at 16.

and slowing or preventing the deployment of new services.⁵² In addition, the imposition of separation requirements on firms providing service on an integrated basis might impose various transition costs on the integrated firm, and could result in service disruption and customer confusion.⁵³

20. Balanced against these costs, we are unable to identify any benefits to be gained from the imposition of separation requirements on public coast stations integrated with landline telex providers. The only justification posited by commenters is that integrated public coast stations could allegedly use their landline telex revenue to cross subsidize their public coast stations' operations. The risk that such a predatory pricing scheme could be implemented, much less successfully implemented, seems remote, at best, and certainly does not justify the imposition of the costs attendant to a structural separation scheme for integrated public coast firms.

21. The theory behind structural separation is that a regulated monopolist that also provides competitive services may have the incentive and ability to shift costs from its competitive business to its regulated business, thereby avoiding rate-of-return constraints. The imposition of separate subsidiary requirements therefore seeks to reduce the ability of dominant firms to engage in such predation or to do so without detection.⁵⁴ Here, however, no evidence is offered that landline telex is a dominant service that could be used by integrated public coast stations to create a predatory environment in the maritime communications marketplace. Quite to the contrary, we have previously recognized that telex services are non-dominant carriers, overlapping "in price, delivery time, and quality with other services."⁵⁵

22. Moreover, even if integrated public coast stations had market power in a telex market, the three commenters posit a predatory pricing scheme that simply makes "no

⁵² Computer III Further Remand Proceedings: Bell Operating Co. Provision of Enhanced Services ¶ 37, Notice of Proposed Rulemaking, CC Docket No. 95-20, ___ FCC Rcd ___ (released Feb. 21, 1995).

⁵³ Id. at ¶ 40.

⁵⁴ See generally Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Final Decision, 77 FCC 2d 384, 461-464 (1980).

⁵⁵ Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore ¶ 22, Fourth Report & Order, 95 FCC 2d 554, 571-527, 575 (1983) (demand substitutes for domestic telex include: (1) domestic teletypewriter exchange services; (2) facsimile, sophisticated terminals, communicating word processors and other forms of record telecommunications; (3) private line voice and data services; and (4) switched voice services).

economic sense."⁵⁶ If integrated coastal stations priced their maritime services below cost, they would be foregoing profits, and in order for such an "investment for the future" to be rational, those coastal stations would have to have a reasonable expectation of recovering, in the form of later monopoly profits, more than the losses they suffered.⁵⁷ This appears implausible, for even if the maritime-only public coast stations were driven out of business, there would still remain strong competition for maritime business from cellular and satellite-based services, which apparently are strong enough to threaten the very existence of public coast stations. Therefore, such a predatory scheme would be doomed from the outset and it seems improbable that such a scheme would be pursued.⁵⁸

23. Finally, public coast stations have been in existence for approximately 100 years,⁵⁹ and are the most mature players in the business of communications services for vessels in coastal waterways and offshore. Moreover, the number of public coast stations that provide landline telex service is relatively small. Thus, it seems likely that if integrated public coast stations that provide landline telex service engaged in strategic conduct abusing any market power they might have (as implausible as that seems), such competitive abuses could be readily detectable. In sum, the remedy that the three commenters propose -- that each public coast station that provides both maritime and landline telex services be required to create a separate subsidiary for their telex service -- would merely subject them to unnecessary regulation without providing any apparent benefits.

24. We also note that, under our decision herein, all international public coast stations remain subject to tariff and market-exit regulations.⁶⁰ Recently, by comparison, we exercised our authority to forbear from subjecting most domestic-CMRS licensees to such regulations. We then ruled that such domestic-CMRS licensees affiliated with local exchange carriers will not be required to conduct their businesses separately, *i.e.*, structural separation,

⁵⁶ See Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (defendants entitled to summary judgment where plaintiff advanced implausible predatory pricing scheme that made no economic sense).

⁵⁷ In evaluating possible predatory pricing schemes, courts have focused on the likelihood of recoupment -- thus, the firm must be able to sustain monopoly power for ample time to both recoup its losses and to harvest some additional gain. *Id.*, 475 U.S. at 589.

⁵⁸ A predatory pricing scheme cannot be successful if entry into the market is so easy, or if the competitors that are not subject to the predation are so numerous, that a predator would not be able to recoup monopoly profits after its rival are vanquished. See, e.g., Northeastern Tel. Co. v. AT&T, 651 F.2d 76, 89 (2d Cir. 1981), cert. denied, 455 U.S. 943 (1982).

⁵⁹ Notice of Proposed Rulemaking and Notice of Inquiry ¶ 2, PR Docket No. 92-257, 7 FCC Rcd 7863.

⁶⁰ See 47 C.F.R. § 63.15.

but will be subject to certain accounting safeguards.⁶¹ If, in the future, we similarly forbear from regulating international public coast stations, we would consider adopting similar accounting safeguards, as appropriate.

25. We find, in summary, that reclassifying international public coast stations as non-dominant common carriers will serve the public interest by promoting competition.⁶² We believe that the advantages of increased competition coupled with the threat of potential Commission action and the difficulty of concealing anti-competitive practices, are sufficient to deter unfair competitive practices in the public coast station market. Therefore, we are amending the rules to classify all public coast stations as non-dominant common carriers that will be treated under streamlined regulatory procedures.

III. CONCLUSION

26. Accordingly, we are amending Parts 2, 80, and 90 of the Rules to provide for private land mobile sharing of certain marine VHF public correspondence frequencies. We are also amending Part 63 of the Rules to reclassify public coast stations as non-dominant common carriers. These actions will serve the public interest by promoting the rapid development of new services and the increased use of state-of-the-art radio communication technologies and better serve the maritime and land mobile customers by increasing the efficiency of spectrum usage and minimizing the regulatory burden on marine communications providers while having no negative impact on the public safety or efficiency of communications.

27. Finally, we are adopting two nonsubstantive editorial corrections to the table in Section 80.373(f) of the Commission's Rules, 47 C.F.R. § 80.373(f). Because the editorial rule amendments adopted herein are minor and noncontroversial in nature, we find that there is good cause to not comply with the notice and comment provisions of the Administrative

⁶¹ See 332 SRO, at ¶ 218, note 45 *supra*.

⁶² AT&T's international public coast station service that is offered through its high seas tariff is an international MTS service within price cap Basket 1. See AT&T Tariff No. 1, Section 3.3, page 67. The NOI did not specifically address the issue of AT&T's service and its treatment under price caps. Consequently, parties may not have been given adequate notice that a change in the rules for public coast stations would affect the services or status of AT&T which is subject to special regulatory oversight as the only dominant interexchange carrier. We also do not have the type of evidence in the record that we have in other cases examined in order to determine whether any AT&T service should be moved from price cap regulation to streamlined regulation. For these reasons, AT&T's status remains unchanged by this rule making. AT&T, however, may petition the Commission to treat its international public coast station service like other public coast station services affected by this Order, as a nondominant service subject to streamlined regulation.

Procedure Act. See 5 U.S.C. § 553(b)(3)(B).

IV. FINAL REGULATORY ANALYSIS

28. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action:

This First Report and Order authorizes sharing of certain frequencies in the Maritime Service by land mobile users, and reclassifies marine public coast stations as non-dominant common carriers. Authorizing sharing of maritime frequencies will improve the efficiency of spectrum use, and reclassifying public coast stations as non-dominant common carriers will help to avert the cessation of operations by these stations by reducing their regulatory burden, while at the same time ensuring competition in the maritime communications market.

II. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant alternatives considered:

No significant alternative to this action was contained in the NOI or suggested by commenters. The action represents the best means to achieve the regulatory objective of minimizing the regulatory burden on the public.

V. ORDERING CLAUSES

29. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4(i), 303(r), and 307(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 307(c), Parts 2, 63, 80 and 90 of the Commission's Rules, 47 C.F.R. Parts 2, 63, 80 and 90 ARE AMENDED as set forth below.

30. IT IS FURTHER ORDERED that this First Report and Order will be effective thirty days after publication in the Federal Register.

31. For further information contact Roger S. Noel, Wireless Telecommunications Bureau, Private Wireless Division, telephone (202) 418-0680, mail stop 2000F.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Attachment

* * * FINAL RULES * *

Chapter I of Title 47 of the Code of Federal Regulations, Parts 2, 63, 80, and 90 are amended as follows:

I. Part 2 - FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: Secs. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.106 is amended by adding land mobile allocations to the United States table, non-government section (column 5) and FCC use designators section (column 6), in the 157.1875-157.45 MHz and 161.775-162.0125 MHz bands and adding one non-government footnote, to read as follows:

§ 2.106 Table of Frequency Allocations.

* * *			* *		* *	
International table			United States table		FCC use designators	
Region 1- allocation MHz	Region 2- allocation MHz	Region 3- allocation MHz	Government	Non-Government	Rule Part(s)	Special-use frequencies
(1)	(2)	(3)	Allocation MHz (4)	Allocation MHz (5)	(6)	(7)
* * *			* *		* *	

157.1875-157.45 MARITIME MOBILE LAND MOBILE 613 US223 US266 NG111 NG154	MARITIME (80) PRIVATE LAND MOBILE (90)
---	--

161.775-162.0125 MARITIME MOBILE LAND MOBILE 613 US266 NG6 NG154	DOMESTIC PUBLIC LAND MOBILE (22) MARITIME (80) PRIVATE LAND MOBILE (90)
---	--

NG154 The 157.1875-157.45 MHz and 161.775-162.0125 MHz bands are also allocated to the land mobile service for assignment to stations as described in Part 90 of this chapter.

* * * * *

II. Part 63 - EXTENSION OF LINES AND DISCONTINUANCE OF SERVICE BY CARRIERS AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The table of contents for Part 63 is amended by deleting Sections 63.64, 63.69, and 63.70.

2. The authority citation for Part 63 continues to read as follows:

AUTHORITY: Sec. 4, 48, Stat. 1066, as amended 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat. 1075, as amended; 47 U.S.C. 214.

3. Section 63.62 is amended by revising the initial paragraph, deleting paragraph (e) and redesignating paragraphs (f) and (g) as (e) and (f) respectively to read as follows:

§ 63.62 Type of discontinuance, reduction, or impairment of telephone or telegraph service requiring formal application.

* * *except as provided in paragraph (c) of this section, or in emergency cases* * *

* * * * *

4. Sections 63.64, 63.69 and 63.70 are deleted.

5. Section 63.90 is amended by revising paragraph (a) to read as follows:

§ 63.90 Publication and posting of notices.

(a) Immediately upon the filing of an application or informal request (except a request under § 63.71) for authority to close or otherwise discontinue the operation, or reduce the hours of service at a telephone exchange (except an exchange located at a military establishment), the applicant shall post a public notice at least 51 cm by 61 cm (20 inches by 24 inches), with letter of commensurate size, in a conspicuous place in the exchange affected, and also in the window of any such exchange having window space fronting on a public street at street level. Such notice shall be posted at least 14 days and shall contain the following information, as may be applicable:

(1) * * *

* * * * *

III. Part 80 - STATIONS IN THE MARITIME SERVICES.

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.5 is amended by adding a new paragraph in alphabetical order to read as follows:

§ 80.5 Definitions.

* * *

Navigable Waters. This term, as used in reference to waters of the United States, its territories and possessions, means the waters shoreward of the baseline of its territorial sea and internal waters as contained in 33 C.F.R. § 2.05-25.

* * * * *

3. In Section 80.371, the table listed in paragraph (c) is amended by modifying the table, adding Footnote 4, to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) * * *

Working Carrier Frequency Pairs in the 156-162 MHz Band^{1,4}

* * * * *

⁴ Except for the frequency pair 157.425/162.025 MHz, these frequencies may be shared with stations in the private land mobile radio service, within the 48 contiguous states, under the terms of operation described in § 90.283 of this chapter.

* * * * *

4. In Section 80.373(f), the first column of the table is revised by redesignating the references to Footnotes 14 and 15 as 15 and 16 respectively for channels 09 and 70, to read as follows:

§ 80.373 Private Communications Frequencies.

* * * * *

(f) * * *

Frequencies in the 156-162 MHz Band			
Channel designator	Carrier frequency (MHz)		Points of communication (between coast and ship unless otherwise indicated)
	Ship transmit	Coast transmit	
* * *			
Digital Selective Calling			
70 ¹⁵	156.525	156.525	
Noncommercial			
* * * 09 ¹⁶ * * * * *	156.450	156.450	

IV. Part 90 - PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. Section 90.7 is amended by adding a new paragraph in alphabetical order to read as follows:

§ 90.7 Definitions.

* * *

Navigable Waters. This term, as used in reference to waters of the United States, its territories and possessions, means the waters shoreward of the baseline of its territorial sea and internal waters as contained in 33 C.F.R. § 2.05-25.

3. Part 90 is amended by adding a new Section 90.283 under Subpart K to read as follows:

§ 90.283 Inter-service sharing of maritime frequencies in the 156-162 MHz band.

(a) The following frequency pairs may be assigned to any station eligible for licensing in the Industrial and Land Transportation Radio Services (subparts D and E of this Part excluding § 90.75) for duplex operation within the 48 contiguous states in accordance with the rules of their individual services, the conditions set forth in this section, and the CANADA/U.S.A. channeling agreement for VHF maritime public correspondence found in § 80.57 of this chapter.

Frequency (MHz)	
Mobile Station Transmit	Base Station Transmit
157.200	161.800
157.225	161.825
157.250	161.850
157.275	161.875
157.300	161.900
157.325	161.925
157.350	161.950
157.375	161.975
157.400	162.000

(b) Assignment will be made only when VHF frequencies available for assignment under this Part are unavailable due to congestion, as determined by a certified private land mobile frequency coordinator. Applicants must provide evidence of frequency coordination in accordance with § 90.175.

(c) Station power, as measured at the output terminals of the transmitter, must not exceed 50 watts for base stations and 20 watts for mobile stations. Antenna height (HAAT) must not exceed 122 meters (400 feet) for base stations and 4.5 meters (15 feet) for mobile stations. Such base and mobile stations must not be operated on board aircraft in flight.

(d) The following table, along with the antenna height (HAAT) and power (ERP), must be used to determine the minimum separation required between proposed base stations and each of the following: i) co-channel public coast stations licensed under Part 80 of this chapter, ii) the coastline of any navigable waterway, iii) grandfathered public safety licensees operating on 157.35 MHz or 161.85 MHz. Applicants whose exact ERP or HAAT are not reflected in the table must use the next highest figure shown.

**REQUIRED SEPARATION IN KILOMETERS (MILES) OF BASE STATION
FROM COASTLINES/PUBLIC COAST STATIONS**

Base Station Characteristics					
HAAT	ERP (watts)				
meters (feet)	400	300	200	100	50
15 (50)	138 (86)	135 (84)	129 (80)	121 (75)	116 (72)
30 (100)	154 (96)	151 (94)	145 (90)	137 (85)	130 (81)
61 (200)	166 (103)	167 (104)	161 (100)	153 (95)	145 (90)
122(400)	187 (116)	177 (110)	183 (114)	169 (105)	159 (99)

(e) In the event of interference, the Commission may require, without a hearing, licensees of base stations authorized under this section that are located within 241 kilometers (150 miles) of an existing, co-channel public coast station, grandfathered co-channel public safety station or an international border to reduce radiated power, decrease antenna height, and/or install directional antennas. Mobile stations must operate only within radio range of their associated base station.

(f) Individual waiver requests to operate on a secondary, non-interference, basis will be considered in cases where the applicant's base station satisfies the requirements of paragraph (d)(i) and (iii) but does not satisfy the requirements of paragraph (d)(ii) of this section. All waiver requests must be submitted in accordance with § 1.931 of the chapter. Such secondary operations must cease immediately upon notification by the Commission that the station is causing interference to maritime operations.

4. Section 90.555 is amended by revising two of the service titles in paragraph (a) and by adding eighteen new frequencies in numerical order in paragraph (b) to read as follows:

§ 90.555 Combined frequency listing.

(a) * * *

Industrial Services (I)

* * *

Land Transportation Services (LT)

* * * * *

(b) * * *

Frequency	Services	Special Limitations
157.200.....	I,LT.....	See § 90.283
157.225.....	Do.....	Do.
157.250.....	Do.....	Do.
157.275.....	Do.....	Do.
157.300.....	Do.....	Do.
157.325.....	Do.....	Do.
157.350.....	Do.....	Do.
157.375.....	Do.....	Do.
157.400.....	Do.....	Do.
* * *		
161.800.....	I,LT.....	See § 90.283
161.825.....	Do.....	Do.
161.850.....	Do.....	Do.
161.875.....	Do.....	Do.
161.900.....	Do.....	Do.
161.925.....	Do.....	Do.
161.950.....	Do.....	Do.
161.975.....	Do.....	Do.
162.000.....	Do.....	Do.
* * * * *		